



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT ISSUED TO KINDER MORGAN LIQUIDS TERMINALS LLC AST FACILITY ID # 5016044

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and § 62.1-44.15(8d), between the State Water Control Board and Kinder Morgan Liquids Terminals LLC for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

6. "Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil and includes a pipeline. The Facility is owned by Kinder Morgan Liquids Terminals LLC, located at 502 Hill Street, Chesapeake, VA.
7. "Kinder Morgan" means Kinder Morgan Liquids Terminals LLC, a limited liability company (VA LLC ID# T052946-3) certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.
8. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity.
9. "Order" means this document, also known as a Consent Special Order.
10. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. 9 VAC 25-210-10.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Kinder Morgan, a person pursuant to 9 VAC 25-91-10, owns and operates the Facility. The Facility contains 23 AST's and is located on the Southern Branch of the Elizabeth River, a state water.
2. On January 22, 2016, the DEQ Tidewater Regional Office ("TRO") Pollution Response Program ("PREP") was made aware of a Discharge at the Facility that resulted from an over-fill of one of the ASTs.
3. On January 22, 2016 DEQ PREP staff confirmed from a site visit that there was not a Discharge of the Jet A/Kerosene from the secondary containment area to state waters or the environment.
4. On January 23, 2016, Tri-State Bird Rescue & Research, Inc.'s Oil Spill Response Team was contacted by the National Oceanic and Atmospheric Administration regarding reports of oiled wildlife following a Discharge of Oil at the Facility. On-site personnel initially reported 20-30 oiled waterfowl.
5. On January 28, 2016, Kinder Morgan confirmed the discharge of 75,222 gallons of Oil in the form of Jet A/Kerosene into the secondary containment field around ASTs 6 and 7 on January 22, 2016 at approximately 0550 hours. Kinder Morgan reported the overfill of AST 6 was the immediate cause of the discharge; the

manifold valve was incorrectly aligned for the Oil to go into AST 6 instead of the intended AST 15; AST 6 overfilled discharging Oil.

6. On March 18, 2016, Kinder Morgan provided additional information regarding the discharge of Jet A/Kerosene from AST 6. Kinder Morgan reported that failure of employees to follow procedures led to the discharge of Oil from AST 6. Also, the communication link between Kinder Morgan and the supplier was found to be faulty leading to the AST 6 high level alarm not to operate.
7. 9 VAC 25-91-130 (B)(3)(a) states that an AST operator shall institute safe fill, shutdown and transfer procedures or equivalent measures established by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur.
8. On March 18, 2016 Kinder Morgan provided documentation that the failures by employees to follow safe fill, shutdown, and transfer procedures had been addressed.
9. On April 13, 2016, DEQ issued a Notice of Violation (NOV) (No. TRO-05-2164) to Kinder Morgan for failure to follow safe fill, shutdown, and transfer procedures, which resulted in the discharge of approximately 75,222 gallons of Jet A/Kerosene into the secondary containment area.
10. Based upon site visit by DEQ staff on January 22, 2016 and documentation submitted by Kinder Morgan on January 28, 2016 and March 18, 2016, the State Water Control Board concludes that Kinder Morgan has violated 9 VAC 25-91-130 (B)(3)(a) for failure to follow safe fill, shutdown, and transfer procedures, as described in paragraphs C(2) through C(7) above.
11. Kinder Morgan has submitted documentation that verifies that the violations in paragraphs C(2) through C(7), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders Kinder Morgan, and Kinder Morgan agrees to pay a civil charge of \$6,727.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Kinder Morgan shall include its Federal Employer Identification Number (FEIN) [_____] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Kinder Morgan shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Kinder Morgan for good cause shown by Kinder Morgan, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order, Kinder Morgan admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Kinder Morgan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kinder Morgan declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Kinder Morgan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kinder Morgan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Kinder Morgan

shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Kinder Morgan shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee, and Kinder Morgan. Nevertheless, Kinder Morgan agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until in effect until:
 - (a) Kinder Morgan petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Kinder Morgan.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kinder Morgan from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Kinder Morgan and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Kinder Morgan certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Kinder Morgan to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kinder Morgan.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Kinder Morgan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28 day of July, 2016.

Maria R. Nold
Maria R. Nold, Regional Director
Department of Environmental Quality

Kinder Morgan Liquids Terminals LLC voluntarily agrees to the issuance of this Order.

Date: 5/24/2016 By: Arthur Rudolph, VP of Operation
(Person) (Title)
Kinder Morgan

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this 25th day of

May, 2016, by Arthur Rudolph who is

VP of Operations of Kinder Morgan on behalf of the company.

Virginia King
Notary Public

Registration No.

My commission expires: April 26th 2020

Notary seal: